

REMARKS / ARGUMENTS

Claims 1-21 are rejected in the instant action. In this response, claim 17 is canceled, claims 1-3, 7, 9 and 15-16 are amended, and claim 22 is newly added. All amendments are supported by the original disclosure. The recitations in claim 22 are well supported, for example, by the disclosure appearing in paragraphs 0023 and 0025 of the specification, and in the Figures of the drawings referred to therein. The amendment to claim 1 affects each of the other previously rejected claims. Applicant respectfully traverses the rejections in view of the amendments presented herein and the accompanying remarks and supporting Declaration of Susan Pope Under 37 C.F.R. §1.132. No fee is believed to be required by the claim amendments because the total number of pending claims is unchanged and because there are only two independent claims. A two-month extension of the response period is requested, and the fee in payment of the large entity fee for such extension is enclosed.

Claims 1-9 and 13-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,287,826 in view of U.S. 6,192,621. As amended, claim 1 now recites that the active ingredient is selected from the group consisting of p-cresyl acetate and phenyl acetic acid, which are not seen to be disclosed or suggested by any of the cited references. This recitation previously appeared in claim 17, which is now cancelled. Claim 17 was previously rejected without a prior art citation as to the stated components on the basis that it would have been obvious to employ those components as the preferred active ingredient in the article of '826 as modified by '621. Applicant respectfully traverses the rejection as previously applied to claim 17, and believes that the incorporation of those active ingredients into claim 1 patentably distinguishes the claimed invention over the cited art.

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation to modify the reference; a reasonable expectation of success; and all

claim limitations must be taught or suggested by the references relied upon. The examiner has not yet presented a convincing line of reasoning as to why the artisan would have found the invention previously rejected as claim 17, and now carried forward into all pending claims, as required by MPEP §2142. This is not a situation where applicant's use of p-cresyl acetate and phenyl acetic acid in the invention as claimed is common knowledge in the art capable of "instant and unquestionable demonstration as being well-known" as suggested in MPEP §2144.03. It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record or without explicitly setting forth the basis for such reasoning. Applicant respectfully urges that the examiner has not presented a *prima facie* case of obviousness with respect to the subject matter of independent claims 1 and 22 as amended herein, and requests reconsideration and withdrawal of the §103 rejection as to all pending claims. Claims 2-16 and 18-21 depend from claim 1 and recite subject matter that cannot be obvious as a matter of law if the subject matter of claim 1, as amended, is not obvious.

The '621 patent discloses the use of odorous substances including both deterrents (such as ammonia, moth bass, pepper, soap, dried blood, human and dog hair, tobacco, THIRAM [tetramethylthiuram disulfide] and HINDER), and attractants (may include sweet smelling substances such as honey and essence of citrus). An absorbent or sponge-like material are disclosed for use in holding an odiferous substance to prevent spillage and slow evaporation.

The '826 patent discloses the use of beta-ionone as a preferred active ingredient for modifying the excretory behavior of dogs.

The '145 patent discloses a method for luring animals by providing microporous silica gel beads soaked with an animal attractant, repellent or training scent. The use of

Applicant's active ingredients, p-cresyl acetate and phenylacetic acid, is not seen to be disclosed. The subject beads are preferably distributed using a shaker.

Attached as Exhibit A to this response are copies of the title page and pages 307-308 and 859 from Hawley's *Condensed Chemical Dictionary*, Fourteenth Edition, for the components p-cresyl acetate and phenylacetic acid. The indicated uses for p-cresyl acetate are "Perfumery, flavoring." The indicated uses for phenylacetic acid are "Perfume, precursor in manufacture of penicillin G, fungicide, flavoring, laboratory reagent." There is no suggestion in this reference, believed to be commonly used by those of skill in the art, that these two active ingredients can be used to induce pets, specifically canines, to eliminate in a particular vicinity designated by placement of the yard stake in which such active ingredient is present.

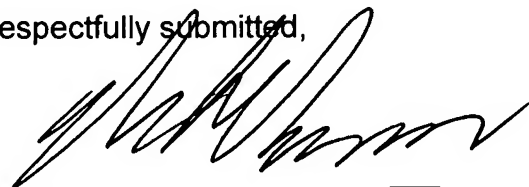
To establish a *prima facie* case of obviousness, there must be some suggestion or motivation to modify the reference; a reasonable expectation of success; and all claim limitations must be taught or suggested by the references relied upon. The examiner has not yet presented a convincing line of reasoning as to why the artisan would have found the invention previously rejected as claim 17, and now carried forward into all pending claims, as required by MPEP §2142. This is not a situation where applicant's use of p-cresyl acetate and phenyl acetic acid in the invention as claimed is common knowledge in the art capable of "instant and unquestionable demonstration as being well-known" as suggested in MPEP §2144.03. It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record or without explicitly setting forth the basis for such reasoning. Applicant respectfully urges that the examiner has not presented a *prima facie* case of obviousness with respect to the subject matter of independent claims 1 and 22 as amended herein, and requests reconsideration and withdrawal of the §103 rejection as to all pending claims. Claims 2-16 and 18-21 depend from claim 1 and recite subject

matter that cannot be obvious as a matter of law if the subject matter of claim 1, as amended, is not obvious.

Attached as Exhibit B to this Amendment and Response is the Declaration of Susan Pope Under 37 C.F.R. §1.132. Declarant states therein that numerous different compositions were tried for use in the subject yard stakes without success prior to determining that p-cresyl acetate and phenyl acetic acid were the two active ingredients that were most effective for attracting dogs and for inducing them to eliminate in a predetermined area.

For the reasons stated above, Applicant respectfully submits that the amended claims are not obvious in view of the prior art of record, and requests that a timely Notice of Allowance be issued in this case. Please charge any additional fee that may be required or credit any overpayment to Deposit Account No. 12-1781 of Locke Liddell & Sapp, LLP.

Respectfully submitted,



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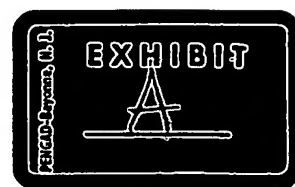
Hawley's
Condensed Chemical
Dictionary
Fourteenth Edition


Revised by
Richard J. Lewis, Sr.

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Library of Congress Cataloging-in-Publication Data:

Condensed chemical dictionary.

Hawley's condensed chemical dictionary.—14th ed./ rev. by Richard J. Lewis, Sr. p. cm.

Includes index.

ISBN 0-471-38735-5 (cloth: acid-free paper)

1. Chemistry—Dictionaries. I. Title: Condensed chemical dictionary. II Hawley, Gessner Goodrich, 1905– III. Lewis, Richard J., Sr. IV. Title.

QD5 C5 2002

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Printed in the United States of America.

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soluble in water,
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ose, xylose, and
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oil; liquid pitch

n-brown, oily liq-
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its of naphthalene
637F (335C), d
00C, flash p 165F
benzene, and tolu-

of coal tar.
cation.

l.
mes, skin and eye

ophone poles, ma-
fungicide, biocide.

anisidine.

an acrylic fiber.

cymethylbenzene;

A mixture of iso-
r petroleum.
or pinkish liquid;
wt/gal 8.66-8.68 lb,
C), mp 11-35C, bp

191-203C. Soluble in alcohol, glycol, dilute alkalis, and water.

Derivation: Coal tar (from coke and gas works), also from toluene by sulfonation or oxidation.

Grade: Various, depending on phenol content or other properties. NF grade contains not more than 5% phenol.

Hazard: Irritant, corrosive to skin and mucous membranes, absorbed via skin. TLV: 5 ppm.

Use: Disinfectant, phenolic resins, tricresyl phosphate, ore flotation, textile scouring agent, organic intermediate, manufacture of salicylaldehyde, coumarin, and herbicides, surfactant, synthetic food flavors (*para* isomer only).

See cresylic acids.

m-cresol. (*m*-cresylic acid; 3-methylphenol).

CAS: 108-39-4. $\text{CH}_3\text{C}_6\text{H}_4\text{OH}$.

Properties: Colorless to yellowish liquid; phenol-like odor. D 1.034, mp 12C, bp 203C, wt/gal 8.66 lb, flash p 187F (86C), autoign temp 1038F (558C). Soluble in alcohol, ether, and chloroform; soluble in water.

Derivation: By fractional distillation of crude cresol (from coal tar), also synthetically.

Method of purification: Rectification.

Grade: Technical (95-98%).

Hazard: TLV: 5 ppm.

See cresol.

o-cresol. (*o*-cresylic acid; 2-methylphenol).

CAS: 95-48-7. $\text{CH}_3\text{C}_6\text{H}_4\text{OH}$.

Properties: White crystals; phenol-like odor. D 1.047; mp 30.9C; flash p 178F (81C); autoign temp 1110F (598C); bp 191C; wt/gal 8.68 lb. Soluble in alcohol, ether, chloroform, and hot water.

Derivation: (1) By fractional distillation of crude cresol from coal tar. (2) Interaction of methanol and phenol.

Method of purification: Crystals.

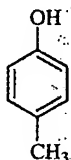
Grade: According to fp: 25, 29, 30, 30.5C, etc.

Hazard: TLV: 5 ppm.

See cresol.

p-cresol. (*p*-cresylic acid; 4-methylphenol).

CAS: 106-44-5. $\text{CH}_3\text{C}_6\text{H}_4\text{OH}$.



Properties: Crystalline mass; phenol-like odor. Wt/gal 8.67 lb, d 1.039, bp 202C, mp 35.25C, flash p 187F (86C), autoign temp 1038F (558C). Soluble in alcohol, ether, chloroform, and hot water.

Derivation: (1) By fractional distillation of crude cresol; (2) from benzene by the cumene process (see phenol).

Method of purification: Crystallization.

Grade: Technical, 98%, 99.0% min purity or 34C min fp.

Hazard: TLV: 5 ppm.

See cresol.

cresolphthalein.

$\text{C}_6\text{H}_4\text{COOC}(\text{C}_6\text{H}_3(\text{OH})\text{CH}_3)_2$. An acid-base indicator, changes from colorless to red between pH 8.2 and 9.8, reagent.

See indicator.

cresol purple.

$\text{C}_6\text{H}_4\text{SO}_3\text{OC}(\text{C}_6\text{H}_3(\text{OH})\text{CH}_3)_2$. *m*-Cresolsulfonphthalein, an acid-base indicator, showing color change from red to yellow over the range pH 1.2-2.8, and from yellow to purple over the range pH 7.4-9.0.

See indicator.

cresol red.

$\text{C}_6\text{H}_4\text{SO}_3\text{OC}(\text{C}_6\text{H}_3(\text{OH})\text{CH}_3)_2$. *o*-Cresol-sulfonphthalein, an acid-base indicator, changes from yellow to red between pH 7.0 and 8.8.

See indicator.

cresotic acid. (cresotinic acid; hydroxytoluic acid). $\text{CH}_3\text{C}_6\text{H}_3(\text{OH})\text{COOH}$. Ten possible isomers; most common is 2-hydroxy-3-methylbenzoic acid, also known as *o*-cresotic acid or *o*-homosalicylic acid. The description that follows is of this isomer. **Properties:** White crystals or powder. Mp 166C, bp approximately 250C. Partially soluble in hot water; soluble in alcohol and ether. Combustible.

Derivation: Treatment of *o*-cresol with caustic and carbon dioxide under pressure.

Use: Dye intermediate, research on plant growth inhibition.

m-cresyl acetate. (*m*-tolyl acetate).

CAS: 140-39-6. $\text{CH}_3\text{C}_6\text{H}_4\text{OCOCH}_3$.

Properties: Colorless, oily liquid; odor similar to phenol. Bp approximately 112C, distillation with steam. Insoluble in water; soluble in common organic solvents. Combustible.

Use: Medicine (antiseptic, fungicide).

o-cresyl acetate. (*o*-tolyl acetate).

$\text{CH}_3\text{COOC}_6\text{H}_4\text{CH}_3$.

Properties: Liquid. Bp 208C. Nearly insoluble in cold water; soluble in hot water and organic solvents. Combustible.

Use: Flavoring.

p-cresyl acetate. (*p*-tolyl acetate).

$\text{CH}_3\text{C}_6\text{H}_4\text{OCOCH}_3$.

Properties: Colorless liquid; floral odor. D 1.0532 (15C), optical rotation 0 degrees (100 mm Hg), refr index 1.500-1.504, acid value 0.7, ester value 341.6.

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Soluble in 2.5 volumes of 70% alcohol and in most fixed oils; insoluble in glycerol. Combustible.

Grade: Technical, FCC.

Use: Perfumery, flavoring.

cresyldiglycol carbonate. (diethylene glycol bis(cresylcarbonate)). $C_{20}H_{22}O_7$.

Properties: Colorless liquid of low volatility. D 1.19 (20/4C), bp approximately 250C (2 mm Hg), flash p 475F (246C), refr index 1.523 (20C). Insoluble in water (very stable to hydrolysis). Widely soluble in organic solvents. Compatible with many resins and plastics. Combustible.

Use: Plasticizer.

cresyldiphenyl phosphate. (cresyl phenyl phosphate). $(CH_3C_6H_4)(C_6H_5)_2PO_4$. Probably seldom a pure compound, but a mixture of *o*-, *m*-, and *p*-cresyl and phenyl phosphates.

Properties: Colorless, transparent liquid; very slight odor. D 1.20 (20/20C), fp -38C, boiling range 235-255C (4 mm Hg), flash p 450F (232C). Insoluble in water; soluble in most organic solvents except glycerol. Combustible.

Use: Plasticizer, extreme-pressure lubricant, hydraulic fluids, gasoline additive, food packaging.

cresylic acids. Commercial mixtures of phenolic materials boiling above the cresol range. An arbitrary standard in use for cresylic acids is that 50% must boil above 204C. If the boiling point is less than 204C, the material is called cresol. Cresylic acid varies widely according to its source and boiling range. A typical commercial cut, bp 220-250C, has the composition *m*- and *p*-cresols 0-1%; 2,4- and 2,5-xylenols 0-3%; 2,3- and 3,5-xylenols 10-20%; 3,4-xyleneol 20-30%; and *C*₉ phenols 50-60%. Excellent electrical insulators.

Derivation: Petroleum, coal tar. Imported cresylic acid is derived from coal tar (gasworks), also made synthetically.

Hazard: Corrosive to skin, absorbed via skin.

Use: Phosphate esters, phenolic resins, wire enamel solvent, plasticizers, gasoline additives, laminates, coating for magnet wire for small electric motors. Disinfectants, metal-cleaning compounds, phenolic resins, flotation agents, surfactants, chemical intermediates, oil additives, solvent refining of lubricating oils, scouring compounds, pesticides.

***p*-cresyl isobutyrate.** (*p*-tolyl isobutyrate). $CH_3CH_2CH_2COCH(CH_3)_2$.

Use: Flavoring.

cresylphenyl phosphate. See cresyldiphenyl phosphate.

cresyl silicate. $(CH_3C_6H_4O)_2Si$.

Properties: Colorless liquid. Bp 450C.

Derivation: Reaction of cresol and silicon tetrachloride.

Use: Heat-transfer fluid.

cresyl-*p*-toluene sulfonate. (tolyl-*p*-toluene sulfonate). $CH_3C_6H_4SO_3C_6H_4CH_3$.

Properties: Brown, oily liquid; faint odor. D 1.207, flash p 365F (185C), mp 68.70C. Combustible.

Derivation: From reaction of *p*-toluenesulfonyl chloride with *p*-cresol.

Use: Plasticizer.

Crick-Watson structure. See deoxyribonucleic acid.

cricondentherm. The maximum temperature at which two phases can coexist. See phase.

Criegee reaction. Oxidative cleavage of vicinal glycols by lead tetraacetate.

critical assembly. A system of fissionable material (enriched uranium) and moderator sufficient to sustain a chain reaction at a low and controllable power level, as in a nuclear reactor. See fission; nuclear reactor.

critical constant. A maximum or minimum value for a physical constant that is characteristic of a substance, e.g., the critical temperature of a gas is the temperature above which it cannot be liquefied by an increase in pressure.

criticality. The state of a nuclear reactor when it is sustaining a chain reaction.

critical mass. The minimum mass of a fissionable material (^{235}U or ^{239}Pu) that will initiate an uncontrolled chain reaction as in an atomic bomb. The critical mass of pure ^{239}Pu is about 10 lb, and of ^{235}U about 33 lb. This phenomenon was unknown before 1940.

Critical pigment volume concentration.

(CPVC). The transition point above and below which there are substantial differences in the appearance and behavior of a paint film.

critical point. (1) The transition point between the liquid and gaseous states of a substance. (2) The temperature above which a gas cannot be liquefied however high the pressure. (3) The temperature at which internal changes take place within a metal.

critical potential. The amount of energy needed to raise an electron from a lower to a higher level.

critical solution temperature. The temperature above or below which two liquids are miscible with all proportions. Some pairs of liquids have both an upper and a lower critical solution temperature, that is, they can exist in two phases only in a medium temperature range.

critical volume. substance at

crocein acid. naphthol-8-s

Derivation: Sulfuric acid at
Use: Azo-dye

Crocein Sca. Crocein.

crocetin. Derived from
Properties: Red, soluble in pyridine
Use: Experimental, increasing or thus decreases

crocidolite. See asbestos.

crocking. surface of a

"Crodamal"
Grade: In liquid
Use: As emollient stick product

"Crodamide"
slip and mo
Use: Plastics

"Crodamide"
slip and mo
Available for
Use: In many

Cross-Bevan
of rayon by carbon disulfide in dilute caustic solution into a cross solution containing surface agent

crosshead. extrusion machine extruded in right angles to coating of v

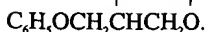
Properties: White, crystalline solid. Mp 53C, bp 150–155C (4 mm Hg). Soluble in water, alcohol, glycerol, carbon tetrachloride, warm benzene; insoluble in gasoline. Combustible.

Derivation: Phenol and glycerol.

Use: Plasticizer, resins, lacquers.

phenoxypropylene oxide.

CAS: 122-60-1.



Properties: Practically colorless liquid; characteristic odor. D 1.1110 (20/20C), bp 244.2C, vap press less than 0.1 mm Hg (20C), fp 2.8C, viscosity 6.93 cP (20C). Very slightly soluble in water.

phenoxy resin. A high molecular weight thermoplastic copolymer of bisphenol A and epichlorohydrin having the basic molecular structure $-\text{[OC}_6\text{H}_4\text{C(CH}_3)_2\text{C}_6\text{H}_4\text{OCH}_2\text{CH(OH)CH}_2\text{]}_n-$ (n is about 100). It uses the same raw materials as epoxy resins but contains no epoxy groups. It may be cured by reacting with polyisocyanates, anhydrides, or other cross-linking agent capable of reacting with hydroxyl groups.

The ductility of phenoxy resins resembles that of metals. They are transparent and also characterized by low mold shrinkage, good dimensional stability, and moderately good resistance to temperature and corrosion. Phenoxy resins are soluble in methyl ethyl ketone and have been used for coatings and adhesives. A typical injection-molded specimen has a tensile strength of 9000 psi, heat distortion point 86.6C at 264 psi load, and d 1.18.

They may be extruded or blow molded. Parts may be thermally formed and heat or solvent welded. Some applications are blow-molded containers, pipe, ventilating ducts, and molded parts.

phenyl. The univalent C_6H_5 group derived from benzene and characteristic of phenol and other derivatives.

phenylacetaldehyde. (α -toluic aldehyde).

CAS: 122-78-1. $\text{C}_6\text{H}_5\text{CH}_2\text{CHO}$.

Properties: Colorless liquid; strong hyacinth-like odor. D 1.023–1.030 (25C), fp –10C, bp 193–194C, refr index 1.520–1.530, becomes more viscous on aging. Soluble in 2 parts of 80% alcohol; soluble in ether and most fixed oils; slightly soluble in water. Combustible.

Derivation: From phenyl- α -chloroacetic acid, by action of alkalis, oxidation of phenylethyl alcohol.

Grade: Technical, 50% soluble in benzyl alcohol, FCC.

Use: Perfumes, flavoring, laboratory reagent.

phenylacetaldehyde dimethylacetal. (α -tolyl aldehyde dimethyl acetal).

CAS: 101-48-4. $\text{C}_6\text{H}_5\text{CH}_2\text{CH(OCH}_3)_2$.

Properties: Colorless liquid; strong odor. More sta-

ble than phenylacetaldehyde; not known to cause discoloration. D 1.000–1.004 (25/25C), refr index 1.493–1.496 (20C), flash p 191F (88.3C) (TCC). Soluble in 2 parts of 70% alcohol. Combustible.

Grade: Technical, FCC.

Use: Perfumery, flavoring, laboratory reagent.

phenylacetamide. (α -toluamide).

CAS: 103-81-1. $\text{C}_6\text{H}_5\text{CH}_2\text{CONH}_2$.

Properties: White crystals. Bp 280–290C (decomposes), mp 156–160C. Soluble in hot water and alcohol; slightly soluble in cold water and ether. Combustible.

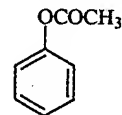
Derivation: From acetophenone or styrene by Willgerodt reaction, dehydration of ammonium phenyl acetate.

Use: Organic synthesis, pharmaceuticals, penicillin G precursor, laboratory reagent.

N-phenylacetamide. See acetanilide.

phenyl acetate. (acetylphenol).

CAS: 122-79-2. $\text{C}_6\text{H}_5\text{OOCCH}_3$.



Properties: Water-white liquid. D 1.073 (25/25C), bp 195–196C, flash p 176F (80C). Soluble in alcohol and ether; almost insoluble in water. Combustible.

Derivation: (1) From phenol and acetyl chloride. (2) By heating triphenyl phosphate with potassium acetate and alcohol.

Use: Solvent, organic synthesis, laboratory reagent.

phenylacetic acid. (α -toluic acid).

CAS: 103-82-2. $\text{C}_6\text{H}_5\text{CH}_2\text{COOH}$.

Properties: Shiny, white plate crystals; floral odor. D 1.0809, fp 76–78C, bp 262C. Soluble in alcohol, ether and hot water. Combustible.

Derivation: From benzyl cyanide refluxed with dilute hydrochloric acid.

Grade: Technical, FCC.

Use: Perfume, precursor in manufacture of penicillin G, fungicide, flavoring, laboratory reagent.

phenylacetoneitrile. See benzyl cyanide.

α -phenylacetophenone. See deoxybenzoin.

phenylacetyl chloride. $\text{C}_6\text{H}_5\text{CH}_2\text{COCl}$.

Properties: Colorless liquid. Refr index 1.5320 (20C).

Hazard: Strong irritant.

Use: Acylating agent, including manufacture of esters for flavors; laboratory reagent.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. : 10/644,174 Confirmation No. 5715
Applicant : Pope, Susan C.
Filed : August 20, 2003
TC/Art Unit : 3643
Examiner : Nguyen, Son T
For : Lawn Stake With Canine Scent Attractant
Docket No. : 65448.84753

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Signature

Date of Signature

Monty L. Ross, Registration No. 28,899
Attorney for Applicant

Dear Sir:

**DECLARATION OF SUSAN CRAWFORD POPE
UNDER 37 C.F.R. §1.132**

I, Susan Crawford Pope, being over the age of twenty-one years and of sound mind, hereby declare as follows:

1. I am the sole inventor named in the above-identified patent application.
2. I have read and am familiar with the examiner's action for the subject application that was mailed May 19, 2004, and I understand that claims 1-21 as then presented are rejected as obvious under 35 U.S.C. §103(a).



3. Prior to selecting p-cresyl acetate and phenyl acetic acid as the preferred active ingredients for use in my invention, I tried numerous different compositions without success. These included, for example, red fox urine, buck urine, and split tallow fatty acid.
4. In each case, I would dip a wooden yard stake in a solution of the active ingredient for sufficient time to allow the wood to absorb some of the active ingredient, insert the stake into the ground in a yard containing dogs, for example, and then observe the behavior of the animals. None was effective for inducing a dog to eliminate in that location.
5. Using a wooden yard stake dipped in p-cresyl acetate or in phenyl acetic acid, however, and following the same procedure, the animals were both attracted to the stakes and induced to eliminate in the area of the stake within a short time.
6. We thereafter had plastic yard stakes injection molded from a polymeric material comprising microspheres containing one of the preferred active ingredients. Dogs were again attracted to the subject stakes when placed in a yard, and were induced to eliminate near the stakes.

I hereby declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true. I understand that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001 and may jeopardize the validity of the application or any patent issuing thereon.


Susan Crawford Pope, Declarant

Date October 18, 2004